SUPREME COURT, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1968.

No. 44

(Formerly No. 1210, October Term, 1967.)

WILLIAM SKINNER, AUGUST R. GUELDNER and ALTON J. CHARBONNET,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

On Certiorari to the Supreme Court of Louisiana To Review Proceedings of that Court in No. 48,445, "State of Louisiana vs. William Skinner, et al.".

SUPPLEMENTAL APPENDIX.

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ORIGINAL OPINION—STATE SUPREME COURT.

HAMITER, Justice.

William Skinner, August R. Gueldner and Alton J. Charbonnet were jointly charged in a bill of information, in two counts, with the illegal possession and sale of a narcotic drug (marijuana) on May 21, 1965. Following a trial before a jury of twelve they were found guilty as charged on both counts. Thereafter, each was sentenced to a lengthy term at hard labor in the state penitentiary.

Thirty-five bills of exceptions reserved during the course of the proceedings were perfected. However, in this court defendants rely on only fifteen of them, some of which involve the same issues.

One of the bills principally relied on, and which we think is meritorious, is that taken to the overruling of defendants' objection to the trial judge's general charge to the jury. It is numbered 29.

The charge contained, as the state concedes, a full statement relative to the law of conspiracy. With reference to this subject the judge observed:

"CONSPIRACY

"I charge you, gentlemen of the Jury, that a criminal conspiracy is defined to be a combination or agreement between two or more persons to do a criminal or unlawful act, or to do a lawful act by criminal or unlawful means. It has been said that a criminal conspiracy is a partnership in criminal purposes.

"The term conspiracy imports an agreement, but the agreement need not be a formal one. It is not necessary, to constitute a conspiracy that two or more persons should meet together, and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words, or in writing, state what the unlawful scheme is to be, and the details of the plan, or means, by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or

through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design.

"Conspiracies to commit crime can be established as well by circumstantial evidence as by direct evidence.

"The weight and sufficiency of the evidence to prove a criminal conspiracy is a matter for the jury, and so is the existence of the conspiracy.

"A conspiracy may, and generally must, be proved by circumstantial evidence, and if the circumstances tend to prove it, it is for the jury to determine whether they are consistent with the reasonable hypotheses of innocence. It is not necessary to sustain proof of a conspiracy to show that the parties made and actually agreed jointly to undertake the perpetration of a criminal act; that fact may be proved by circumstantial evidence sufficient to satisfy the jury of its existence.

"*No person can be held guilty unless the act is either actually or constructively his;* and it cannot be his, in either sense, unless committed by his own hand or by someone acting in concert with him, or in furtherance of a common object or purpose, as distinguished from someone acting independently or in opposition to him.

"The rule for criminal responsibility for acts of others done in prosecution of an unlawful object is subject to the limitation that the particular act of one of a party, for which the associates and confed-

erates are to be held liable, must have been shown to have been done for the furtherance, or in the prosecution of, the common object and design for which they are combined together. There can be no criminal responsibility on the part of a conspirator resulting from something not fairly within the common enterprise.

"*When two or more persons enter upon a common enterprise or adventure which contemplates the commission of a criminal offense, each is a conspirator, and his criminal responsibility extends not alone to the enterprise, adventure or encounter in which the conspirators are engaged but takes in the proximate natural and logical consequences of such adventure.*

"*When a conspiracy is entered into to do an unlawful act, all persons engaged therein are responsible for all that is done in pursuance thereof by any of their conspirators, until the object for which the conspiracy was entered into is fully accomplished.*

"*This responsibility is not confined to the accomplishment of the common design for which the conspiracy was entered into, but it extends to, and includes, collateral acts and incidental and growing out of the common design.*

"It is for you to determine, gentlemen, as a matter of fact, from all of the evidence submitted to you, whether or not a conspiracy has been established,

beyond a reasonable doubt, and that the defendants on trial were engaged in the said conspiracy.

"Unless you are satisfied that a conspiracy has been established I charge you that the acts and declarations of one of the parties to the alleged conspiracy do not bind the other." (Italics ours.)

In his per curiam to bill No. 29 the judge, in justifying his observations, notes only that "The defendants did not point out wherein the above charges given to the jury was not the law and the Court is at a loss to understand why the defendants objected thereto."

However, such bill, which contains the pertinent portion of the transcript, shows that following the charge defense counsel objected thusly: "I respectfully object to Your Honor's charge on conspiracy, *both as to its tenor and applicability in this case.*"

This language was clearly sufficient to put the court on notice that the objection was made to the relevancy of the charge on conspiracy, the defendants having been accused of committing specific illegal acts and not with *a conspiracy* to commit them.

In State v. Gunter et al., 208 La. 694, 23 So.2d 305, one of the three accused charged jointly with simple kidnapping had pleaded guilty and was a witness for the state. On the trial of the others, one had requested special charges on the law of conspiracy which recited: " 'I charge you, gentlemen of the jury, that mere cognizance of fraudulent or illegal action does

not constitute a conspiracy, but there must be shown active participation by the parties charged.

"'**********

"'That when the common enterprise is abandoned by one of the conspirators, that no other conspirator by his acts or actions is permitted to affect the others.

"'That in order for the acts and declarations of a conspirator to be admissible against a co-conspirator, the State must prove that the conspiracy is formed or existed and that the accused against whom it is sought to employ such evidence was connected with such conspiracy and crime charged.

"'That the admissibility of the acts and declarations of the co-conspirators against other members of the conspiracy is limited to those acts and declarations which are pursuant to and in furtherance of the unlawful combination or crime charged.'"

The trial judge refused to so charge. And on appeal to this court, following conviction, we observed: "Under Article 26 of the Criminal Code, conspiracy is a separate and distinct offense from the completed crime. So much is this the case that a conviction for conspiracy will not bar a conviction for the completed crime and vice versa.

"As stated by the judge in his per curiam, under Article 24 of the Criminal Code, all persons concerned in the commission of a crime are regarded as

principals. The defendants in this case were jointly charged with the offense of simple kidnapping under Article 45 of the Criminal Code. They were charged as principals and not as conspirators. * * *

"The judge gave his charge to the jury in writing, but he did not give to the jury the special charges requested by the defendant. The judge assigns as his reason for refusing to give the special charges that they were covered in part by his general charge *and were otherwise not applicable to the facts in the case. His ruling was correct. Since the defendants were not charged and prosecuted for conspiring to commit the offense of simple kidnapping, but were charged and prosecuted for the basic offense of simple kidnapping, the instructions requested by defendant relative to conspiracy were not applicable to the case.* * *" (Italics ours.)

Also pertinent here is State v. Fletcher, 236 La. 40, 106 So.2d 709 in which we said: "The request to include a statement concerning the law of conspiracy in the general charge *was likewise properly denied as being irrelevant. Appellant was charged with the substantive offense of possessing narcotics and not with the separate and distinct crime of a conspiracy to possess them, which is composed of different elements.*" (Italics ours.)

In its original brief, and in several supplemental briefs filed following oral argument of the case, the state has cited (in support of its contention that the

detailed charge on the substantive law of conspiracy was proper) the following cases: State v. Gebbia et al., 121 La. 1083, 47 So. 32, State v. Brasseaux, 163 La. 686, 112 So. 650, State v. Robichaux, 165 La. 497, 115 So. 728, State v. Taylor, 173 La. 1010, 139 So. 463, State v. Terrell, 175 La. 758, 144 So. 488, State v. Gunter, 180 La. 145, 156 So. 203, and State v. Melerine, 236 La. 929, 109 So.2d. 471.

We note initially that all of these decisions except State v. Melerine, supra, were rendered prior to the last Gunter and the Fletcher cases heretofore discussed, the latter two being the latest expressions of this court specifically on the subject.

Moreover, all of the decisions cited by the state, except the Terrell and Taylor cases, supra, related only to the admissibility and probative effect of hearsay evidence as between co-defendants. In each the defendants objected to the court's admitting testimony of conversations (which tended to connect them with the crime charged) between third persons and a co-accused. The basis of the objection was that the prejudicial evidence was hearsay as to the defendants who were not present when the conversations occurred. We held that such conversations (which ordinarily would be objectionable under the hearsay rule) were admissible and could be considered against all defendants if it be proved by the state that a conspiracy existed to commit the crime with which the defendants were jointly charged (or as against such of them as were shown to have been involved in the conspiracy).

In most of the opinions we noted that the trial judge cautioned the jurors that the admitted evidence could be considered as to all of the defendants only if they found that the statements were made during the existence of a conspiracy. But in none does it appear that a full statement of the substantive law of conspiracy was included in the general charge, such as occurred herein. (In the Robichaux case the statements were limited to the defendant present, because they were made after the crime had been committed and hence after the termination of the conspiracy. In the Gebbia opinion we noted that the district judge in his general charge had made a short statement, which we quoted, concerning the law of conspiracy. However, we did not pass on the propriety of his doing so nor on the correctness of his remarks, we observing that no bill of exceptions was reserved to the charge or the court's refusal to charge.)

In State v. Taylor, supra, four defendants were accused of murder, the charge against three of them being founded on the murder-felony doctrine. The alleged murder occurred *after* (not during) the commission of the felony (an armed robbery), at a time when the participants in the robbery had separated and while the defendant who actually did the killing was some distance from the scene of the felony attempting to make good his escape therefrom. A careful reading of the charge given by the trial judge discloses that it was really not a dissertation on the general law of conspiracy, and that it was not objected to as such. Rather, it was an instruction on the

felony-murder doctrine as it applied to the particular facts of that case—to what extent each participant in the felony was responsible for a killing occurring as a result of the commission of a felony and as to how long the responsibility endured. We discussed only the questions of whether the law as stated in the general charge was correct or whether the law was as stated in special charges requested by the defendants.

As our opinion in the Taylor case reflects, since the killing involved therein occurred *after* the completion of the robbery, and away from its scene, the legal responsibility of the robbery participants for such killing depended on their being parties to a conspiracy to commit the robbery, the commission of the robbery by them, and the fact that the conspiracy agreement contemplated that it would endure until the booty therefrom had been distributed. And the state was required to prove these facts in order to establish their guilt of the crime charged. Consequently, the court's charge was not merely an abstract proposition of the law of conspiracy. To the contrary, it constituted an instruction on the essential elements of the crime of murder under the murder-felony doctrine (under which three of the defendants were being tried) as applicable to the facts of that particular case.

Furthermore, our opinion in such case makes it clear that the contention of the defendants was not that any charge involving conspiracy was inapplica-

ble, but that the substance of the charge was erroneous. Indeed, the defendants had prepared and submitted lengthy special instructions on the entire subject matter (which are quoted in the opinion) to the effect that under such circumstances no guilt would attach to the participants, or co-conspirators, if the killing occurred out of their presence *after the completion of the robbery* and away from the scene thereof. In fact, the issues were presented to us (not on an objection to the judge's charge) in a bill taken to the court's refusal to give the special charges requested by defendants.

State v. Terrell, supra, presented an issue similar to that considered in State v. Taylor, supra. Some of the defendants had been tried for murder under the felony-murder doctrine, the killing having occurred *after* the completion of the initial illegal act (armed robbery) and not in the presence of all of the defendants. The judge gave the almost identical charge as was given in the Taylor case. (The author of the opinion refers the reader to the latter case for a full text of the charge.) Reference to the briefs in that case show that, as in the Taylor matter, the complaint of the defendants was that the charge was not substantively correct. Far from urging that no charge involving conspiracy could be given, one of the defendants, Mose Conner, urged that "The charge on the law of conspiracy was *insufficient* * * *." Also, it appears that all defendants themselves requested their own charges on conspiracy.

In any event in the Terrell case, similarly as in the Taylor prosecution, the occurrence and extent of the conspiracy to commit the robbery were essential substantive elements of the murder accusation as it related to those not present when the killing occurred and, hence, required explanation to the jury. In both cases the instructions appeared in that portion of the general charge dealing with who were "PRINCIPALS", and not (as here) as a separate instruction on "CONSPIRACY."

The Taylor and Terrell cases, therefore, are clearly distinguishable from the instant matter wherein proof of an agreement, or conspiracy, to possess or sell narcotics was not an essential, substantive, element of the crime, it being necessary only that the state show that each *aided or abetted* in the commission of the said illegal acts (LRS 14:24), albeit proof of a conspiracy could be shown during the trial in order to render admissible as to more than one defendant evidence connecting them with the particular crime charged, which proof might otherwise be inadmissible under the hearsay rule.

The state herein, in a supplemental brief, has also cited LRS 5:455 in support of the propriety of the judge's charge on conspiracy. But that article in no way affects the substantive law. Its purpose and intent is solely to provide for *regulating the effect of evidence* as between co-conspirators during the existence of the conspiracy. The article in no manner affects their guilt or innocence, and it does not require

proof of a conspiracy for conviction of the illegal acts charged. State v. Rodosta, 173 La. 623, 138 So. 124 and State v. Clement, 194 La. 395, 193 So. 685. Therefore, when such evidence is admitted over the objection of one or more defendants that it is hearsay as to them, the judge, under the provisions of this article, may then caution the jury as to its effect among the accused. But the article clearly does not warrant a separate and independent instruction in the general charge on the entire substantive law of conspiracy, such as was given herein.

We conclude, therefore, that the conspiracy portion of the charge complained of in bill No. 29 constituted an abstract, inapplicable discourse on the law on that subject and was improper.

We further conclude that such charge was prejudicial to these defendants. (Incidentally, nowhere in any of the state's several briefs is it argued that the charge was not prejudicial.)

As stated in "Underhill's Criminal Evidence, 4th Edition, page 310, Section 180, "The large majority of persons of average intelligence are untrained in logical methods of thinking, and are therefore prone to draw illogical and incorrect inferences, and conclusions without adequate foundation. From such persons jurors are selected.* * *" Because the jury is made up of lay persons, uninformed as to legal distinctions, we think that a detailed substantive statement as to the law of conspiracy might easily

have led to believe that they could properly return a verdict of "guilty as charged" if they found only that a conspiracy existed among the defendants. (Particularly is this true in view of the court's admonition that "it is for you to determine, gentlemen, as a matter of fact, from all of the evidence submitted to you, whether or not a conspiracy has been established, * * * and that the defendants on trial were engaged in the said conspiracy.")

In this connection we note that the state's chief witness, an undercover agent named Fullington, had testified that he had made the contact to obtain the drug through Skinner at about 11:00 o'clock of the morning of May 21, 1965 (the date of the crime charged), at Skinner's Motor Mart; and that the sale and delivery was consummated that night with Charbonnet. Also, the court permitted the state to introduce evidence of the commission of similar offenses *at a later date* to show system and intent as to all defendants, which evidence consisted of conversations and acts not carried on in the presence of all defendants and occurring after the commission of the crime charged—that is, as shown by the per curiam, after the conspiracy proved by the state had ended. (The evidence was allowed, although as to at least one of those occasions two of the defendants objected because it was out of their presence. See bill of exceptions No. 19.)

The record reflects serious discrepancies between important portions of Fullington's testimony given

during the trial and at a previous preliminary hearing. Moreover, a disinterested witness for the defense testified positively (contrary to Fullington's testimony) that, in connection with the purchase and acceptance of an automobile from Skinner, she was on Skinner's Motor Mart lot and in his office from 9:00 in the morning of May 21, 1965 (the date of the crime charged) until 2:30 that afternoon and that only Gueldner was there in the morning—that Skinner did not come until 1:00 p.m. o'clock—and that Fullington was not there at all while she was present.

In view of this serious conflict in the testimony, as well as the discrepancies in Fullington's statements, it is quite probable that the jurors could not find without a doubt that the crime charged in the bill of information actually occurred; but that they did believe from all of the evidence, including the proof of the later offenses, that the defendants were at least involved in a conspiracy; and hence that they (the jurors) returned their mentioned verdict, being under the impression (because of the judge's erroneous admonition) that they could find the defendants guilty as charged if they concluded only that such a conspiracy existed.

It is, of course, impossible to discover and state exactly what prompted the verdict. But when such a strong likelihood exists that the jury's decision might well have been influenced by improper procedure, as here, we must hold that the error complained of in bill No. 29 was prejudicial to the defendants.

Because of this holding we deem it unnecessary to consider the other bills of exceptions. The errors complained of in them will not likely occur in retrial of the case.

For the reasons assigned the convictions and sentences are annulled and set aside, and the case is remanded for a new trial.

SANDERS, Justice (dissenting).

The Court has reversed because the trial judge gave the jury an instruction as to conspiracy in a trial of three defendants for the illegal possession and sale of a narcotic drug. I dissent.

It is well settled that when multiple defendants are charged with a substantive offense, evidence is admissible at the trial of a conspiracy to commit the crime charged. State v. Robichaux, 165 La. 497, 115 So. 728; State v. Gebbia, 121 La. 1083, 47 So. 32; State v. Ford, 37 La.Ann. 443; 16 Am.Jur.2d Evidence, § 37, p. 147; Annotation, 66 A.L.R. 1311.

When such evidence has been offered, the Court may properly give an instruction to the jury pertaining to conspiracy between the defendants, although the indictment or bill of information does not charge conspiracy. State v. Terrell, 175 La. 758, 144 So. 488; 53 Am.Jur., Trial, § 673, p. 519; Annotation, 66 A.L.R. 1311, 1314; 2 Marr's Criminal Jurisprudence (2d ed. 1923) p. 848. See also State v. Taylor,

173 La. 1010, 139 So. 463, and State v. Brasseaux, 163 La. 686, 112 So. 650.

The rule applicable here is correctly stated in 53 Am.Jur., Trial, § 673, p. 519 as follows:

> "[W]here there is evidence that the defendants had entered into a conspiracy to commit the crime charged, an instruction on the law of conspiracy is proper, and this, even though the indictment or information may not charge a conspiracy."

Contrary to the majority, I am of the opinion that the holding of State v. Terrell, supra, supports the above rule. See also State v. Capaci, 179 La. 462, 154 So. 419. On the other hand, State v. Gunter, 208 La. 694, 23 So.2d 305 and State v. Fletcher, 236 La. 40, 106 So.2d 709, relied on by the majority, hold only that the trial judge committed no error in refusing to give conspiracy instructions in those cases. Hence, the cases provide no authority for the present decision. See, in this connection, State v. Kolafa, 291 Mo. 340, 236 S.W. 302.

I am unable to subscribe to the view that the conspiracy instruction is an "abstract, inapplicable discourse on the law." In the concluding paragraph of the instruction, the trial judge clearly defined its purpose, that of determining whether one defendant's acts and declarations bound the others. As I see it, the purpose is a valid one in this prosecution.

For the reasons assigned, I respectfully dissent.

HAWTHORNE, Justice (dissenting).

I do not agree with the holding of the majority that the trial judge erred in charging the jury on the law on conspiracy. In fact, I think he was required to do so.

We are here dealing with a bill of information against three defendants, Skinner, Gueldner, and Charbonnet, for possession and sale of a narcotic drug (marihuana). It is well settled under the jurisprudence of this court that where an indictment charges that the crime was committed by two or more persons, such an indictment necessarily involves a conspiracy. State v. Ford, 37 La.Ann. 443, 459 (six defendants charged with murder); State v. Gebbia, 121 La. 1083, 1104, 47 So. 32 (two defendants charged with murder); State v. Dundas, 168 La. 95, 104, 121 So. 586 (two defendants charged with stealing cattle); State v. Gunter, 180 La. 145, 151, 156 So. 203 (two defendants charged with murder); see also State v. Brasseaux, 163 La. 686, 112 So. 650. To say that an indictment charging two or more persons with a crime involves a conspiracy does not mean that the jury may return a verdict of guilty of conspiring to commit the crime charged. What this means is that evidence of a conspiracy may be admitted without a formal allegation of conspiracy. State v. Ford, supra.

In the instant case the State offered evidence seeking to prove a conspiracy, as was entirely proper un-

der the authorities cited above. The trial judge tells us in one of his per curiams: "The State had already established that the three defendants on trial had conspired together to sell marijuana to Officer Fullington on May 21, 1965 [the date the offense was charged as having been committed]."

In charging the jury on the law of conspiracy in the present case the trial judge was following a mandate of our law, and had he failed so to charge, the defendants in this case would have had legal cause for complaint. That mandate reads: "The judge shall charge the jury on the law applicable to the case and shall charge the jury that it is their duty to accept and to apply the law as laid down for them by the judge." Former R.S. 15:385; C.Cr.P. Art. 802. This court has held that under this mandate "the judge is required to cover every phase of the case *supported by evidence* whether or not accepted by him as true. Moreover, although a judge in a criminal case is not required to charge on an issue not presented on the evidence, he should give such instructions as are pertinent to the evidence". (Italics ours.) State v. Youngblood, 235 La. 1087, 106 So.2d 689; State v. Tucker, 38 La.Ann. 536; State v. Short, 120 La. 187, 45 So. 98; State v. Robichaux, 165 La. 497, 115 So. 728.

In State v. Capaci, 179 La. 462, 154 So. 419, two persons were indicted for murder. They were tried separately, and each was found guilty of murder. On the appeal of the defendant Capaci this court said:

"The complaint that defendant was prejudiced because the court reiterated in the charge the phases of the law dealing with conspiracy is, in our opinion, frivolous. *It was the duty of the court to charge the jury fully as to the law of conspiracy in this case,* as the defendant is jointly charged with his codefendant for murder, and the indictment necessarily involves conspiracy. * * *" (Italics ours.) In support of this holding the court cited State v. Ford and State v. Gebbia, both of which I have cited above.

In State v. Terrell, 175 La. 758, 144 So. 488, three defendants, indicted for murder, were found guilty and sentenced to death. In that case, as in this one, the objection was made that it was error for the judge to give instructions on the law of conspiracy since the defendants were charged with murder and not with conspiracy. The holding of this court was that the indictment which charged the several defendants with the crime of murder involved also a conspiracy, that evidence of conspiracy was properly introduced and that it was proper for the judge to give instructions on the law of conspiracy.[1]

Not only is it the law of this state that the trial judge shall instruct the jury on the law applicable to the evidence adduced, but it is the law which prevails throughout the United States. Corpus Juris Secundum states the applicable rule as follows:

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[1] Evidence of a conspiracy was admitted in both the Capaci and the Terrell cases.

"* * * As a general rule, the court should instruct on every essential question in the case so as properly to advise the jury of the issues * * *.

* * * * *

"Ordinarily, the court should instruct the jury on every principle of law applicable, and submit every question or issue suggested by the evidence, whether offered by the prosecution or by accused, or by both; and it is immaterial whether the jury would accept the evidence as true or in what light it was regarded by the trial judge. * * *" 23A C.J.S., Criminal Law § 1190, pp. 474-476.

Specifically, where there is evidence of a conspiracy (as there was here), Corpus Juris Secundum gives the rule thus: "Where there is evidence relating to conspiracy in committing the offense, an instruction as to such law is proper * * *." Op.cit. supra, sec. 1287, at p. 692. As authority for this statement cases are cited from Alabama, California, Colorado, Georgia, Kentucky, Michigan, Missouri, and Texas; and so far as I can ascertain, there is no case to the contrary.

R.S. 15:455 provides:

"Each coconspirator is deemed to assent to or to commend whatever is said or done in furtherance of the common enterprise, and it is therefore of no moment that such act was done or such declaration was made out of the presence of the conspirator sought

to be bound thereby, or whether the conspirator doing such act or making such declaration be or be not on trial with his codefendant. But to have this effect a prima facie case of conspiracy must have been established."

Ultimately the question of whether a conspiracy has been established is a question of fact for the jury, but the jury must be instructed on the law of conspiracy so that this law may be properly applied once the jury has made a determination on the question of fact: Thus, if the jury finds that a conspiracy existed and that the defendant or defendants on trial were engaged in it, the jury is free to give such weight as it thinks proper to the evidence of acts and declarations of the codefendants out of the presence of one another in furtherance of the common enterprise. If, on the other hand, the jury finds that a conspiracy has not been established, such evidence should not be considered to the prejudice of the accused. State v. Gebbia, supra. It can thus be readily seen how the failure of the judge to charge the law of conspiracy may prove prejudicial, for the jury must be instructed that unless a conspiracy has been established, the acts and declarations of one defendant do not bind the other defendants. State v. Bolden, 109 La. 484, 33 So. 571; State v. Gebbia, supra; State v. Lebleu, 137 La. 1007, 69 So. 808; State v. Brasseaux, supra.

There can be no question that when evidence is adduced of, for instance, flight of the defendant or

alibi or self-defense or intoxication, it would be the duty of the trial judge to charge the law applicable to flight or alibi or self-defense or intoxication, and it would be error for him not to do so. I do not understand why the majority opinion here puts conspiracy in a different category from these other matters of which the judge is required to charge the law if evidence of them is adduced. Under former R.S. 15:385, and under Article 802 of the present Code of Criminal Procedure, the judge is required to charge the law applicable to the case, yet under the majority holding in this case, even though evidence of conspiracy is adduced and the law of conspiracy is therefore applicable, the judge will commit reversible error if he charges the law of conspiracy. In short, the statutory law requires the judge to charge the law of conspiracy when there is evidence of conspiracy, and the latest expression from this court says he must not.

The defense relies on two cases, State v. Gunter, 208 La. 694, 23 So.2d 305, and State v. Fletcher, 236 La. 40, 106 So.2d 709, both of which were cited with approval in the majority opinion. In each of those cases it was held that the refusal of the trial judge to give a special charge on conspiracy was correct and did not constitute reversible error. In my view the Fletcher case was correctly decided, since the charge was against only the one defendant and thus did not necessarily involve a conspiracy and since there was no evidence of a conspiracy adduced on the trial. The Gunter case stands alone in our juris-

prudence, and if it can be deemed authority for the holding of the majority, it is contrary to the established jurisprudence of this court, as shown by the cases cited above, as well as to the jurisprudence of other states, and contrary to the express provisions of our statutory law embodied in former R.S. 15:385 and Article 802 of our present Code of Criminal Procedure. It should therefore be disregarded or, if necessary, overruled.

UNITED STATES OF AMERICA
STATE OF LOUISIANA
SUPREME COURT OF THE STATE OF LOUISIANA

New Orleans, 70112

New Orleans, Friday, June 30, 1967

Court was duly opened pursuant to adjournment. Present Their Honors: John B. Fournet, Chief Justice, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, Walter B. Hamlin, Joe W. Sanders, and Frank W. Summers, Associate Justices.

* * * *

Rehearings were granted in the following cases: 48,-445 State v. Skinner et al.

I, Harold A. Moise, Jr., Deputy Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this Court.

In Witness Whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 22nd day of May, A. D., 1968.

HAROLD A. MOISE, JR.,
(Seal) Deputy Clerk, Supreme Court of Louisiana.